

W. R. AUSTIN & CO.

JUNE 7, 1898.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MINOR, from the Committee on Claims, submitted the following

REPORT.

[To accompany H. R. 9568.]

The Committee on Claims, to whom was referred the bill (H. R. 9568) for the relief of W. R. Austin & Co., have had the same under consideration and beg leave to submit the following report:

The Senate Committee on Claims have three times reported the claim of William R. Austin & Co. to the Senate, and twice the committee recommended an appropriation of \$35,000, and once \$15,000. (Senate Report No. 641, Fifty-fourth Congress, first session; Senate Report No. 60, Fifty-fifth Congress, first session; Senate Report No. 544, Fifty-fifth Congress, second session.)

On May 20, 1896, a bill passed the Senate at \$35,000. The Committee on Appropriations of the Senate approved of the payment of this claim and put an item in the general deficiency appropriation bill, second session, Fifty-fourth Congress, to pay claimant \$15,000. This item passed the Senate.

This claim was favorably reported to the House from its Claims Committee at the second session of the Fifty-fourth Congress. (House Report No. 2926, Fifty-fourth Congress, second session.)

The committee find, from examination of the numerous papers filed in the case and attached hereto and made a part of this report, that in 1887 William R. Austin conceived the idea of publishing a directory which should contain the names of all the members of the Grand Army of the Republic, the company and regiment in which they served, and their present post-office address.

Mr Austin established his office in the city of New York, where, with a clerk and several expert typewriters, he prosecuted the work of securing names of the Grand Army of the Republic during the years

1888, 1889, and 1890. In order to secure and protect his rights, Mr. Austin applied for and secured a copyright upon the work, in words and figures as follows:

No. 36455 T.]

LIBRARY OF CONGRESS,
Copyright Office, Washington.

To wit, be it remembered, that on the 22d day of December, anno Domini 1888, Joseph W. Kay and W. R. Austin, of New York, have deposited in this office the title of a book, the title or description of which is in the following words, to wit: "The Historical 'Grand Roster Roll of Honor' of our Country's Defenders, the Grand Army of the Republic," classified and indexed as follows: Each comrade's name in the State mustered from, arm of service by the code, etc., the right whereof they claim as proprietors in conformity with the laws of the United States respecting copyrights.

A. R. SPOFFORD, *Librarian of Congress.*

I hereby certify that the foregoing is a true copy of the original record of copyright in my office.

In witness whereof I have hereunto set my hand and affixed the seal of my office this 18th day of February, 1896.

[SEAL.]

A. R. SPOFFORD, *Librarian of Congress.*

Austin & Co. have expended, as shown by affidavits, about \$35,000 in compiling the names for this work, and had secured about 400,000 names. The work was regarded with great favor by Grand Army organizations throughout the entire country.

The Committees on the Library in the Senate and House of Representatives of the Fifty-first Congress favorably reported bills authorizing the purchase by the Government of 5,000 copies of Austin & Co.'s Grand Army Directory for the sum of \$50,000, as appears by Senate bill 2671 and the report thereon hereto attached and made a part of this report.

[S. 2671. Fifty-first Congress, first session. In the Senate of the United States. February 14, 1890. Mr. Evarts (by request) introduced the following bill; which was read twice and referred to the Committee on the Library.]

A BILL for the purchase of a historical book of reference from Austin and Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to purchase five thousand copies of the historical book of reference known as the National Roster of the Grand Army of the Republic, to be published by Austin and Company, of New York City, and the sum of fifty thousand dollars is hereby appropriated to be used in making said purchase. The purpose is for the free distribution, by Senators and Representatives in Congress, of one copy (or copies) to each county library in the United States, so that these important records may be accessible to all that require their use: *Provided,* That said Austin and Company's National Roster shall contain not less than four hundred thousand names of ex-Union soldiers, sailors, and marines, properly indexed and classified by regiment, battery, ship, and so forth, to which each formerly belonged, and the address and location of post to which each and every one belongs; the book to be of first-class quality and finish, handsomely and strongly bound in heavy navy-blue cloth, embellished with gold emblems and lettering (see cut) in keeping with its character as a historical book of reference.

SEC. 2. That no part of the amount hereby appropriated shall be paid to the publishers of this book until said book shall have been examined by such person or persons as the Secretary of the Interior may designate. When said books are ready for delivery, and said books are found to fulfill the above specified conditions, then, and not until then, payments to be made to the publishers as the books are turned over to the constituted authority.

In Senate Report No. 60, Fifty-fifth Congress, second session, the Committee on Claims of the Senate used the following words:

Your committee have to say that this claim is meritorious and should, in their judgment, be placed upon the deficiency appropriation bill.

In Senate Report No. 641, Fifty-fourth Congress, first session, which is attached

hereto and made a part of this report, we find this language in the affidavit of Mr. W. R. Austin:

"It was understood by me that the price was to be \$50,000, as my expenditure in cash had been \$35,000.

"It was considered reasonable that I should have \$15,000 for my services for more than three years, interest on the money invested, and loss and damage because of the destruction of my work under a copyright from the Government, which I had every reason to believe would have paid me a large return for my investment."

Now, without discussing whether the officers of the Government had or had not the power to make a binding agreement of purchase with Mr. W. R. Austin, we think enough is shown to bring this claim within the rule of law laid down in the case of *United States v. Berdan Firearms Manufacturing Company* (156 U. S., 552). In this case the court said:

"That a use of an invention protected by a patent is the use of private property that must be paid for." * * *

Again, the court says:

"These facts bring the case clearly within *United States v. Palmer* (128 U. S., 262; 32:442), and show that the judgment of the Court of Claims was not founded upon a tort resulting from a mere infringement, but upon a contract to which both parties assented. That no price was agreed upon, or that the officers of the Government were not authorized to agree upon a price, is immaterial. No price was fixed in *United States v. Palmer*, supra, or in *United States v. Russell* (80 U. S., 13 Wall., 623; 20:474). The question is whether there was a contract for the use, and not whether all the conditions of the use were provided for in such contract. This is the ordinary rule in respect to the purchase of property or labor."

Mr. W. R. Austin, the owner and manager of said company, had valuable property, no doubt, in his copyright and accumulated data which he consented for the Government to take with the understanding that he should be compensated for the same, as well as for three years of personal service, to say nothing of other valuable considerations moving from him in the prosecution of said work of compilation.

Your committee therefore recommend that at least \$35,000 be paid for the full extinguishment of said claim; that is to say, in full payment for all labor, materials, and vested rights of said W. R. Austin & Co.

[House Report No. 2603, Fifty-first Congress, first session.]

The Committee on the Library, to whom was referred the bill (H. R. 6790) for the purchase of a historical book of reference from Austin & Co., submit the following report:

The committee found by papers filed with the bill that the book was the authorized official directory of the Grand Army of the Republic.

That it will contain over 400,000 names, records, and addresses of Union ex soldiers, sailors, and marines—the largest text-book or record of its kind in the world.

That in addition to the assistance it gives to hundreds of thousands of soldiers in tracing the whereabouts of their old companions, it will save the Government the amount of the appropriation asked annually.

The reason for asking Congress to distribute these books is that they may be made available at as early a date as possible, the enormous expenditure of labor, time, and money making the cost so high the people needing its benefits most are unable to purchase it.

Your committee recommend the passage of the bill.

When the Eleventh Census was taken in June, 1890, it was found that the census law had made provision for the compilation of the names of all soldiers who served in the war of the rebellion, their widows and orphans. As this census would contain all the names compiled by Austin & Co. for their Grand Army Directory, the bill reported by the Library Committee did not pass, and the orders which Austin & Co. had secured from Grand Army organizations, individuals, and libraries, amounting to over 3,500, were withdrawn, causing the failure of the enterprise and the bankruptcy and ruin, financially, of Mr. Austin.

In the fall of 1890 Mr. Austin entered into negotiations with the Hon. Robert P. Porter, then Superintendent of the Census, for the sale of his material to the Census Office. Mr. Porter and Mr. Hunt, of the Census Office, went to New York to examine the material which Austin

& Co. proposed to sell. The evidence shows that after Mr. Hunt examined it boxes were, by the order of Mr. Porter, secured, and the material was boxed preparatory to its shipment, and Mr. Hunt gave to Mr. Austin post-office franks, which were placed on the boxes.

This matter remained in abeyance until finally the Secretary of the Interior, Mr. Noble, referred it to the Assistant Secretary, General Bussey, who made a report, a copy of which is hereto attached, and to which reference is made, the concluding portion of which report is as follows:

I would recommend, therefore, that such report be made to Congress as will provide for the purchase of all the material now in the possession of Austin & Co. relating to the records, names, and addresses of veterans of war, and that by such purchase all question as to vested rights shall be settled; and further providing that, in view of the purchase of said material, the services of W. R. Austin shall be subject to the control and direction of the Superintendent of Census for such time as may be deemed necessary, the services of said Austin to be utilized in the verification and compilation of the names and service of the veterans of the war of the rebellion and widows of such veterans.

CYRUS BUSSEY, *Assistant Secretary.*

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, CENSUS OFFICE,
Washington, February 11, 1891.

SIR: The report of the Superintendent of Census concerning the claim of Austin & Co., having been referred to me for consideration, I have the honor to submit the following report:

By the provisions of section 17 of the act of March 1, 1889, which provided for taking the Eleventh and subsequent censuses, the Census Office was charged with the duty of taking on a special schedule "the names, organizations, and length of service of those who served in the Army, Navy, or Marine Corps of the United States in the war of the rebellion, and who are survivors at the time of said inquiry, and the widows of soldiers, sailors, or marines."

By section 11, of the same act, it is further provided that the census enumerators shall be compensated for this work at the rate of 5 cents for each surviving soldier, sailor, or marine, or the widow of such soldier, sailor, and marine so returned. It is also further provided by the concluding paragraph of section 17 of said act, that of the volumes that shall be prepared and published in connection with said census, there shall be included "a list of the names, organizations, and length of service of surviving soldiers, sailors, and marines, and the widows of soldiers, sailors, and marines."

As a result of these provisions of the census law a return has been made to that office by the census enumerators of over 1,300,000 names, which are now in process of verification as regards length of service and organizations in which they claim to have served.

Austin & Co., on the other hand, claim that having received the encouragement and indorsement of officers and members of the Grand Army of the Republic, they began in 1887 the work of preparing a directory of the members of that organization, covering their names, present address, organizations in which they served, and the number of the post in which they claim membership, but without regard to length of service.

This work, upon which a copyright has been granted to them under the laws of Congress, was commenced prior to the passage of the present census act, and has been prosecuted by them about three years, and at an expense of something like \$35,000. During this time they claim to have obtained about 400,000 names of veterans of the war, members of the Grand Army of the Republic, of which 325,000 at least have been compiled, verified, and proof read.

Austin & Co. do not claim that the work undertaken by them approaches in scope the work charged upon the Census Office under the law. That is, it is not in any sense a census of those who had served in the Army, Navy, or Marine Corps of the United States in the war of the rebellion, and who are survivors and widows of such as have died, but merely an official directory of the Grand Army of the Republic—a partial list only of the surviving soldiers, sailors, and marines, including, in fact, the names only of those who may have belonged in 1887, 1888, and 1889 to the organization named. Their claim is, rather, that the Government that issued them a copy-

right of protection has deliberately barred them from any gain or profit on one of the most popular publications this country has produced, and also placed in jeopardy their three years of work and a cash outlay of \$35,000.

That this claim, to a certain extent at least, is a just one, seems to have been recognized by Congress, inasmuch as a bill has been unanimously favorably reported upon by the Joint Committee on the Library, making an appropriation of \$50,000 for the purchase of a certain number of copies of this directory when completed, for free distribution in the manner provided for by said bill.

In view of the fact, however, that the work now being prosecuted by the Census Office is much more comprehensive and exhaustive in its character than the proposed directory to be issued by Austin & Co., the publication of which by the terms of the present census act has been, as they claim, made not only impracticable but well-nigh impossible, they propose that in lieu thereof the Census Office be directed by authority already vested in the Secretary of the Interior, or by further authority granted to said officer by act of Congress, to purchase all the matter already collected by Austin & Co., including the records, names, and addresses of all veterans of the war now in their possession, and by the purchase of which any question of vested rights by copyright will be settled.

Taking into due consideration all the circumstances governing this matter, and which are herein duly set forth, I am of the opinion that there exists some share of equity in favor of Austin & Co., in that, after having been granted a copyright under the laws of Congress, and in the confidence of this protection they have prosecuted their labors so far as to have become involved financially to the extent of \$35,000, they have been deprived by Congress, by the passage of the census act, of not only all protection under said copyright, but of the benefit of all their labor and all their expenditures.

I can not doubt, therefore, in the face of all the commendations produced by Austin & Co., that what they have to sell is or is not of any particular value to the Census Office; that they have been honest and conscientious in their work; that their labors have been set at naught and money uselessly expended through no fault of theirs, and that simple justice requires that some relief should be extended to them.

It is undoubtedly true that the material which has been collected by them can not be of much practical use to the Census Office in either accelerating the prosecution or reinforcing the accuracy of the work of that office, for the reason that the data in their possession is largely also in the possession of the Census Office, constituting, as it does, in amount not more than one-third, or one-fourth, possibly, of the total number of names which will be included in the publications required under the present census act. In what way the material already collected by Austin & Co. could be utilized in the work of the Census Office, or of how much value it might be as a means of verifying that work, can only be determined by a practical test by persons experienced in such work. The cursory examination made in New York by Mr. Hunt, of the Census Office, was sufficient only to determine the character of the information which they claim to have in their possession, but no adequate idea could be gained by him in the limited time as to its actual value as regards the work of the Census Office.

There can be no question, however, as to the adaptability of Mr. Austin to the work of collecting and codifying the information required to be done under the act providing for the enumeration of surviving soldiers, etc., as anyone conversant with the work can readily understand that the experience which he has gained in the three years would alone educate him to be of value in continuing such work, provided such a step should be deemed advisable.

The claim of Austin & Co. seems to be, therefore, almost wholly one of equity, and should be considered as such without regard to the possible value of the material which has been collected by them and which they propose, for a consideration, to give over to the custody and possession of the Census Office.

I would recommend, therefore, that such report be made to Congress as will provide for the purchase of all the material now in the possession of Austin & Co. relating to the records, names, and addresses of veterans of the war, and that by such purchase all question as to vested rights shall be settled, and further providing that in view of the purchase of said material the services of W. R. Austin shall be subject to the control and direction of the Superintendent of Census for such time as may be deemed necessary, the services of said Austin to be utilized in the verification and compilation of the names and service of the veterans of the war of the rebellion and widows of such veterans.

Very respectfully,

CYRUS BUSSEY,
Assistant Secretary.

THE SECRETARY OF THE INTERIOR.

Superintendent Porter approved Assistant Secretary Bussey's recom-

mendation, and wrote to Senator Hale requesting that an appropriation be made to pay Austin & Co., as follows:

DEPARTMENT OF THE INTERIOR, CENSUS OFFICE,
Washington, February 16, 1891.

MY DEAR SIR: I have the honor to inclose copy of a report made to the Honorable Secretary of the Interior by Hon. Cyrus Bussey, Assistant Secretary, in relation to the claim of W. R. Austin & Co., for compensation for material collected and work done in connection with the preparation of their directory of the veterans of the late war.

I thoroughly concur with General Bussey in his opinion and recommendation, and believe it will be of great advantage to this office to secure the material which Austin & Co. have collected, especially as Mr. Austin is willing to give his services to the Census Office for one year without remuneration in the event of the Government making this purchase.

The matter has been thoroughly examined into by an expert of the Census Office, and if the committee desires copies of the correspondence which was sent to the Honorable Secretary, and upon which the accompanying report was based, they can be furnished.

Very respectfully,

ROBERT P. PORTER,
Superintendent of Census.

Hon. EUGENE HALE,
Chairman Committee Eleventh Census, United States Senate.

FEBRUARY 19, 1891.

MY DEAR SIR: In a letter which I sent to you the other day in reference to securing some material relating to the veterans of the war, I pointed at the importance to this office of securing this data and the service of Mr. Austin.

I believe that it will help the Census Office a great deal, and the effect of securing this material will undoubtedly be to enable this office to publish the volumes within a year. Unless something is done in this manner at this session it will be of little or no value.

The value of these volumes will be entirely in the rapidity of publication. Any serious delay would make them almost worthless for the purpose Congress had in view.

Very respectfully,

ROBERT P. PORTER,
Superintendent of Census.

Hon. EUGENE HALE, *United States Senate.*

Congress failed to take action on the subject and the material was left on Austin's hands.

The claim of Mr. Austin is founded on the fact that after he had been granted a copyright from the Government, and had expended a large amount of money in the compilation of his work, that Congress, by providing for a similar work by the Census Office which would contain all the names of the Grand Army Directory, totally destroyed his enterprise and involved him in financial distress and bankruptcy. He claims that the Government is responsible for his losses and for damages under his copyright, and in this claim your committee concur.

The following citations will serve to show the rights of an individual holding a copyright, and the liability on the part of anyone who infringes such right.

Drone on Copyright, page 5:

No theory, no explanation, no consideration has been advanced by the great writers to account for the inviolability of property in the produce of bodily labor which does not apply with equal force and directness to property in the fruits of intellectual industry.

Ibid, page 8:

It may be assumed that before publication an author has in the fruits of his intellectual labor a prospect as whole and as inviolable as that which exists in material possessions; that he has supreme controlover such productions; may exclude others from their enjoyment; may dispose of them as he pleases. It is generally conceded that the author has this right while the work is in manuscript.

Ibid, pages 16, 17:

Assuming it to be the true doctrine that literary property, both before and after publication, is founded on the same principles, has the same essential attributes, is the same in every respect as ordinary property, it necessarily follows that it must be governed by the same fundamental rules and protected by the same great safeguards that are thrown around all property. Whatever violates the security of one violates the security of the other. How far, then, may the legislature interfere with the material possession which constitutes personal property?

To preserve the sanctity of property has ever been a chief function of the Government. Next to protecting the lives and liberties of the people, it is the highest. Centuries ago it was foreseen that sovereignty itself was to be feared as the most dangerous enemy of this right. As a bulwark against invasion from this source, the Magna Charta was made to declare that property should not be taken from the owner except by "the law of the land." The same guaranty has been sacredly treasured through more than six centuries of English history. It has been firmly implanted in the Constitution of the United States, which declares that private property shall not be taken for public use without just compensation, and in the constitution of every State. There are, however, cases in which the Government may rightfully interfere with private property against the will of the owner. On the universal principle of eminent domain, recognized by all writers on jurisprudence and grafted in the constitutional law of America, the property of the individual is subordinate to the general welfare, and may, without his consent, be taken for public uses. But even here the powers of the State are sharply defined and strictly limited, since no property can be taken except for public use, and none without compensation.

These two conditions, public use and compensation, must always exist. Without either, the taking is unlawful. (II Kent Com., 339, and the authorities there cited; Cooley on Const. Lim., 530, 559.)

This eminent author further says, pages 17, 18:

It is true the line between what is and what is not a public use has not been clearly drawn; but the use must be open to all persons, not one or a few, and it must be demanded by public necessity, convenience, or welfare. There must exist the necessity of accomplishing some public good which is otherwise impracticable. (Vide *People v. Salem*, 20 Mich., 481.) That can only be considered a public use (says a high authority) where a government is supplying its own needs or is furnishing facilities for its citizens in regard to those matters of public necessity, convenience, or welfare which, on account of their peculiar character and the difficulty (perhaps impossibility) of making provision for them otherwise, it is alike proper, useful, and needful for the government to provide.

Cooley (Const. Lim., 533):

No one will contend that the State has any right to control proprietary rights in an unpublished work, that it may compel the author to publish his productions for the benefit of society. And yet, to interfere with the author's right in a manuscript is the same in principle as to regulate his right in a printed composition. The right of property is the same after as before publication. It is as inviolable in one case as the other.

The Department of the Interior, as shown by Assistant Secretary Bussey's report, approved by Superintendent Porter, of the Census Office, assented to the purchase of Austin & Co.'s material, which purchase was to be in full for all claims of every name and nature which they might have under their copyright. Mr. Austin was employed by the Superintendent of the Census to enter upon the work of perfecting the census enumeration of soldiers' names, because of his experience and fitness for the place, and as part of the agreement that the Census Office would take his material and employ him to carry on the work of the Census Office.

The evidence in this case and the authorities above cited show conclusively that Austin & Co. have a just claim in equity for the loss of money and time invested in an enterprise which promised to be extremely profitable, and which was destroyed by the action of the Government in providing by the Eleventh Census for the same data which was covered by his copyright work, and which law was passed subsequent to the issuance of the copyright.

The committee also desires to call attention to the affidavit of William R. Austin, the claimant in this case, and the affidavits of Gibson W. Fairman, hereto attached, and also the report of William C. Hunt, special agent of the Census Office, under date of January 20, 1891:

I, William R. Austin, being duly sworn, depose and say that in the early part of the year of 1887, I commenced the compilation of a Grand Army directory, as shown by the accompanying papers; that I prosecuted said work during the years of 1888, 1889, and 1890, in the city of New York, State of New York, during which time I expended the sum of \$35,000 as shown by the affidavit of Gibson W. Fairman with statement of expenditures; that said Fairman was my bookkeeper and cashier and handled most of the moneys; that I was compelled to suspend the work of completing the publication, because of the fact that the Eleventh Census law provided for a compilation of soldiers' names similar to the one on which I was engaged, only more extensive, as it embraced the names of all soldiers.

Late in the year of 1890 I entered into negotiations with Hon. Robert P. Porter, Superintendent of the Eleventh Census, for the sale of all my material to the Government, as shown by the letter of Assistant Secretary Bussey, to whom the subject had been referred by the Secretary of the Interior; also by the letters of Hon. Robert P. Porter, Superintendent of the Eleventh Census, addressed to Hon. Eugene Hale, chairman of the Committee on the Census of the United States Senate, approving Assistant Secretary Bussey's recommendation for the purchase of my material, and asking Senator Hale to have an appropriation made.

It was understood by me that the price was to be \$50,000, as my expenditure in cash had been \$35,000.

It was considered reasonable that I should have \$15,000 for my services for more than three years, interest on the money invested, and loss and damage because of the destruction of my work under a copyright from the Government, which I had every reason to believe would have paid me a large return for my investment.

Congress did not pass the bill unanimously recommended by the committee of the House of Representatives and the Senate to purchase \$50,000 worth of my books, because the same material was provided for by the Eleventh Census.

The failure of Congress to make an appropriation asked for by Mr. Porter, involved me in bankruptcy, and in the spring of the year of 1891, while I was in the employ of Mr. Porter in the Census Office traveling in the West on the work of securing names of soldiers, my office in the city of New York was seized for rent, my safe and books sold, and I have never been able to recover them, for which reason I am unable to make an exhibit of the original books and papers of my office.

My employment in the Census Office was a part of the understanding between me and Mr. Porter, that he was to take my material and I was to go to work for the Census Office, where my experience would be valuable to the Government in completing the compilation of soldiers' names as authorized by law.

I was led to believe that I had sold my material to the Census Office, as Mr. Porter and Mr. Hunt went with me to New York, where they examined my material, ordered me to box it up, and Mr. Hunt gave me the post-office franks with which to ship the boxes to the Census Office at Washington, D. C.

The Census Office was about this time moving its quarters in the city of Washington, and I was told to hold the boxes until I received directions to ship them.

Because of the passage of the census law, authorizing the compilation of names of soldiers of the war, my work, under a copyright, was made worthless, and I made a bankrupt, heavily involved in debts contracted in the prosecution of my work. For this reason I appeal to Congress for relief.

W. R. AUSTIN.

CITY OF WASHINGTON, *District of Columbia*, ss:

Sworn to and subscribed before me this 17th day of March, A. D. 1896, and I certify that I have read said affidavit to said affiant and acquainted him with its contents before executing the same.

[SEAL.]

SIMON LYON, *Notary Public*.

NEW YORK, *February 14, 1896.*

I, Gibson W. Fairman, of the city, county, and State of New York, depose as follows:

In the month of January, 1891, I was instructed by Austin & Co., whose offices were situated at No. 52 University place, this city, to secure packing cases suitable and of sufficient size, and pack all matter pertaining to the collection and compilation of soldier records which were intended for the publication known as the Grand

Army Directory. Said instructions were carried out by me. I was also furnished by Mr. W. R. Austin with Department of Interior franks, which were directed to Census Office, Washington, D. C., and was instructed by said W. R. Austin to paste said franks on cases so packed and deliver said cases to the New York post-office.

GIBSON W. FAIRMAN.

COUNTY OF NEW YORK, *City of New York, ss:*

Gibson W. Fairman, being duly sworn, deposes and says that the above statement is true in each and every particular.

GIBSON W. FAIRMAN.

[SEAL.]

GILBERT J. MCCLOIN,

Commissioner of Deeds, New York County.

STATE OF NEW YORK, *City and County of New York ss:*

Gibson W. Fairman, being duly sworn, deposeth and says, that he resides at No. 171 St. Nicholas avenue, in the city, county, and State of New York.

That in the spring of 1888 he entered the employ of Austin & Co., doing business at No. 65 East Twelfth street in the city of New York, said Austin & Co. being engaged in the preparation and compilation of a directory of the Grand Army of the Republic.

That subsequently the said Austin & Co. removed their place of business to No. 52 University place, New York City; that he remained continuously in the employ of said Austin & Co. as bookkeeper and general assistant from the spring of 1888 until the earlier part of the year of 1891, and during all that time the said Austin & Co. were engaged in the preparation and compilation of the said directory, and had no other business.

Deponent was cognizant of the payments and disbursements made by said Austin & Co.

That deponent kept the books of the said business, paid the help, and made other disbursements, under the direction of W. R. Austin.

That the annexed statement of the payments is, to the best of deponent's knowledge and belief, true.

GIBSON W. FAIRMAN.

STATE OF NEW YORK, *City and County of New York, ss:*

Sworn to and subscribed before me this 14th day of March, A. D. 1896, and I hereby certify that the above affidavit was made fully known to the deponent.

[SEAL.]

H. ADOLPH WINKOPP,
Notary Public, New York County.

Statement of expenses, Austin & Co., April 1, 1888, to January 1, 1891.

Nine months ending January 1, 1889:

Rent, \$50 per month	\$450.00	
Janitor, \$6 per month	54.00	
Gas company, \$5 per month (average)	45.00	
Printing and stationery, \$85 per month (average)	765.00	
Postage stamps, \$140 per month (average)	1,260.00	
Pay roll, 18 hands, at \$8 per week (average)	5,184.00	
Traveling expenses to Grand Army of the Republic Encampment	150.00	
Sundry expenses: Coal, wood, ice, expressage, furniture, etc.	600.00	
		\$8,508.00

Twelve months ending January 1, 1890:

Rent, \$50 per month	600.00	
Janitor, \$6 per month	72.00	
Gas company, \$5 per month (average)	60.00	
Printing and stationery, \$200 per month (average)	2,400.00	
Postage stamps, \$425 per month (average)	5,100.00	
Pay roll, 30 hands, at \$8 per week (average)	12,480.00	
Traveling expenses to Grand Army of the Republic Encampment, Washington, D. C., etc.	200.00	
Sundry expenses: Coal, wood, ice, expressage, etc.	400.00	
		21,312.00

Twelve months ending January 1, 1891:

Rent, \$50 per month.....	\$600.00	
Janitor, \$6 per month.....	72.00	
Gas company, \$3 per month (average).....	36.00	
Printing and stationery, \$50 per month (average).....	600.00	
Postage stamps, \$60 per month (average).....	720.00	
Pay roll, 7 hands, at \$8 per week (average).....	2,912.00	
Traveling expenses to Grand Army of the Republic Encampment, Washington, Detroit, etc.....	250.00	
Sundry expenses: Coal, wood, ice, expressage, etc.....	200.00	
		\$5,390.00
Total expense account, April 1, 1888, to January 1, 1891.....		35,210.00

DEPARTMENT OF THE INTERIOR, CENSUS OFFICE,
Washington, January 20, 1891.

DEAR SIR: At your request, while in New York, I made a very careful inquiry into the character of the work which had been prosecuted by Mr. W. R. Austin in connection with the compilation of Grand Army of the Republic Directory. The circumstances governing the matter can best be stated if I may be allowed to present not only his side of the case, but also the position in which the Census Office finds itself under the law.

By the provisions of section 17 of the act of March 1, 1891, this office was charged with the duty of taking on a special schedule, "the names, organizations, and length of service of those who had served in the Army, Navy, or Marine Corps of the United States in the war of the rebellion, and who are survivors at the time of said inquiry, and the widows of soldiers, sailors, or marines." By section 11 of the same act it is further provided that the census enumerators shall be compensated for this work at the rate of 5 cents for each surviving soldier, sailor, or marine, or widow of such soldier, sailor, or marine so returned.

It is also further provided by the concluding paragraph of section 17, that of the volumes that shall be prepared and published in connection with said census there shall be included a "list of the names, organizations, and length of service of surviving soldiers, sailors, and marines, and the widows of soldiers, sailors, and marines." As a result of these provisions of the census law, a return has been made to this office by the census enumerators of over 1,300,000 names, which, as you are well aware, are now in process of verification.

On the other hand, it seems that early in 1888, or possibly the latter part of 1887, Mr. W. R. Austin, having received the encouragement and indorsement of Grand Army of the Republic officials, began the work of preparing a directory of all the members of that organization, the commands in which they served, and the number of the post in which they claimed membership, but without regard to the length of service.

This work, according to Mr. Austin's statements, has been prosecuted by him for three years and at an expense of something like \$35,000. He claims, as is shown by his letter herewith, that he has about 400,000 names of veterans of the war, of which 325,000 at least have been compiled, verified, and proof read. He also states that he has a copyright upon classification which he had proposed to use in the compilation of his directory.

In compiling a list or the names, organizations, and service of surviving veterans of the late war there is only one form of presentation practicable, and that is a classification according to the organization in which they served, this being the form of presentation adopted by Mr. Austin as well as by this office.

In the prosecution of the work which Mr. Austin had undertaken, it appears that, to a certain extent at least, the very men, members of the Grand Army and otherwise, who were instrumental in having the work commenced under his supervision were also interested in and advocated the larger and more comprehensive work which was charged upon this office by the census law. By so doing, however, the work which has already been accomplished by Mr. Austin has been practically invalidated.

Under these circumstances, then, the question arises whether the material already collected by Mr. Austin can be utilized, and also in what direction, if any, the services and experience of Mr. Austin can be used to advantage in the work already in hand. So far as the possible purchase of the material already collected by him is concerned, I do not see any difficulty under the law, provided it shall be deemed advisable. It is a question, rather, as to the amount to be paid, as it would be in the case of buying any publication issued by State or other reliable authority purporting to contain rosters of troops or information pertinent to the present inquiry. How much value also, work of the enumerators is, is rather a difficult matter to determine.

As regards utilizing Mr. Austin's services, I should say that if an arrangement can be made with him, he can be of a great deal of assistance to the office and to the work, particularly in the matter of ascertaining whether the census enumerators have obtained a substantially complete enumeration of surviving veterans and widows of veterans. I realize that this is a very difficult matter to establish, but immediate steps must be taken to this end.

Speaking in general, I think it very fair to assume that in the Northern and Eastern States the enumerators have done very good work in this direction, but it is possible that in the Western States the margin of error or lack of proper enumeration may prove to be considerably greater, and should receive careful and thorough investigation without delay. This, of course, is based only upon general information, but the indications are that in some of these States, at least, the number of soldiers returned in the census does not reach by some thousands the number estimated to be present there.

In this connection, as indicating what has already been accomplished by the Census Office, I submit herewith a statement by Mr. Wickham, in charge of this section of my work. The figures named in this statement, of course, you will readily understand, should not be used for publication until some steps have been taken toward verification—a work which, as I have already stated, must be taken in hand immediately and this point established without delay.

Should any arrangement be made with Mr. Austin toward utilizing his services, I could dispatch him upon a part of this errand immediately. Having established the general accuracy of the work of the enumerators or supplemented it by additional data, the work of compilation and verification is largely a matter of detail, and the amount of work that can be accomplished in a week or a month is mainly dependent upon the number of clerks employed and the space provided for its prosecution.

Very respectfully,

Hon. ROBERT P. PORTER,
Superintendent of Census.

WM. C. HUNT,
Special Agent in charge of Fourth Division.

After a careful examination of all the facts and authorities presented by the committee, the conclusion seems irresistible that Mr. Austin expended at least \$35,000 in the preparation of this work, which was brought to naught and rendered absolutely valueless by the action of the Government; and that in addition thereto he was put to great loss in time and personal services, for which some compensation ought to be rendered.

Your committee therefore report the bill back without amendment and recommend that it do pass.

